IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.MC.No. 2753 of 2007()

[Crl.M.C.No.20/07 of Sub Divisional Magistrate, KASARAGOD]

PETITIONER: 3RD COUNTER PETITIONER

KOTTOOR RAJESH,
S/O.NARAYANAN,
VALIYAPOIL,KODAKKAD,
KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
REPRESENTING THE S.I.OF POLICE,CHEEMENI.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2753 of 2007

Dated this the 27th day of September 2007

O R D E R

The petitioner is the third respondent in a proceedings initiated under Section 107 Cr.P.C. Annexure A1 is the preliminary order under which the proceedings have been initiated. The petitioner has not appeared before the Sub Divisional Magistrate. He has, instead, chosen to come before this court with the prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against him.

2. The bone of contention really is an item of property which was purchased by the petitioner and others for the purpose of using the same as the burial ground of a community. Objections were raised by the neighbouring property owners against the use of the said property as a burial ground. Parties have gone to the civil court also and there admittedly is an order restraining the petitioner and others from using the property as a burial ground. It is alleged that in violation of the said order, the property is being used as a burial ground, giving rise to tension, disharmony and breach of peace in the locality. One crime No.6/06 has been registered at the Chimeni police station against the petitioner. Four other crimes have also been

registered in respect of the incidents of burial in the disputed property. Altogether there are five counter petitioners in Annexure A1 proceedings initiated under Section 107 Cr.P.C. They are accused in these five different crimes. Some of them are accused only in some of the crimes and not in all.

3. The petitioner has come to this court with the grievance that the proceedings under Section 107 Cr.P.C. has been initiated against him without any justification. He prays that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings against him. According to him, the property has now been transferred to D.Y.F.I. They are the owners of the property now. They are running the burial ground in the property. Bodies are being buried there. Unnecessarily, whenever such burial takes place, proceedings are initiated against the petitioner and other former owners of the property. This amounts to unnecessary vexation. The petitioner shall be taking steps to quash the proceedings initiated against him in respect of those crimes. But continuance of the proceedings under Section 107 Cr.P.C may be quashed by invoking the powers under Section 482 Cr.P.C. This in short is the prayer of the learned counsel for the petitioner.

4. The learned Public Prosecutor opposes the said prayer. The learned Public Prosecutor submits that though

strictly speaking, both the crimes in which the petitioner is an accused have not been referred to specifically and reference is made only to one of those two crimes, the petitioner is actually arrayed as an accused in two such crimes i.e. 6/06 and 38/06. The learned Public Prosecutor takes the stand that the alleged nuisance is continuing even now creating tension, disharmony and discord in the locality giving rise to threat and breach of peace in the locality. In any view of the matter, proceedings initiated cannot be said to be incorrect or improper. At any rate, proceedings initiated under Section 107 Cr.P.C do not deserve to be quashed by invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C, submits the learned Public Prosecutor.

5. I find merit in the opposition by the learned Public Prosecutor. On the materials presently available, I find that the perception of the threat of breach of peace is real and existent. The question is not whether the petitioner has been arrayed as an accused in all the crimes registered. Without dispute, he has been arrayed as an accused in two such cases. Others similarly placed like the petitioners, who were the former owners have also been arrayed as accused in the other crimes. Be that as it may, the totality of the circumstances do not in any way create any doubt or suspicion in my mind about the bona fides of the

initiation of proceedings under Section 107 Cr.P.C. It certainly is for the petitioner to appear before the Sub Divisional Magistrate and raise his contention that he is not liable to be proceeded against under Section 107 Cr.P.C. The learned Public Prosecutor submits that attempts are afoot to withdraw the proceedings initiated against the accused persons in the said five crimes. I need not and do not intend to express any opinion on the correctness or propriety of such action. There is a submission that some of the cases registered are about to be withdrawn. If those crimes be withdrawn and prematurely closed, certainly the petitioners can raise that also as one of the grounds to support the prayer of dropping of proceedings under Section 107 Cr.P.C before the Sub Divisional Magistrate. It remains that the proceedings initiated do not deserve to be quashed now by invoking the jurisdiction under Section 482 Cr.P.C.

6. This Criminal Miscellaneous Case is in these circumstances dismissed with the above observations.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007